IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2740 OF 2004
WITH
CRIMINAL WRIT PETITION NO. 2741 OF 2004

Kantilal V. Chheda ..Petitioner

versus

State of Maharashtra & Anr. ..Respondents

Mr. S. V. Marwadi for the Petitioner in both the Petitions.

Mr. D. S. Mhaispurkar, APP for the Respondents - State, in both the Petitions.

Mr. S. P. Kadam for Respondent No.2 in Writ Petition No. 2740 of 2004.

Mr. C. M. Jha for Respondent No.2 in Writ Petition No. 2741 of 2004.

CORAM : D. G. DESHPANDE, J.

DATE : 1ST AUGUST, 2006

P.C. :

1. Heard Counsel for the Petitioner, Respondent No. 2 and learned APP for the State. Rule, in both the Petitions. Returnable forthwith, by consent.

2. Issue of process under Section 138 of the Negotiable Instruments Act, is challenged in both

the petitions. Counsel for the petitioner pointed out the original complaints, copy of which are annexed to the respective petitions, and, drew my attention to paragraph 1 of the complaint. According to him, the allegations made against the present petitioner in the paragraph 1, are not sufficient to fulfil requirements of Section 138 of the Negotiable Instruments Act and the order of issue of process is liable to be quashed, in both the petitions.

3. As against this, Counsels for the Complainant i.e. respondent No.2, relied upon the judgment of **this Court (Smt. V. K. Tahilramani, J.) reported in [2005(3) Mah.L. J. V. K. Jain and others vs. Pratap V. Padode and another,** wherein in almost such situation and circumstances, the parties were directed to file revision before the Sessions Court.

4. Counsel for the petitioner drew my attention to unreported judgment of **this Court (A. M. Khanwilkar, J.) dated 19.11.2005 in Criminal Writ Petition No. 486 of 2005 Shishir B. Desai & Anr. vs. Ceat Financial Services Ltd.** wherein in almost

such situation and circumstances, the issue of process against the Company Director was quashed. Counsel for the petitioner states that this court can exercise powers, which have been done by Khanwilkar, J. in the above judgment, and then judgment of Smt. V. K. Tahilramani, J. cannot come in the way.

5. Firstly, there is no question whether this court has powers or not. Secondly, according to the counsels for the complainant - Respondent No.2 the judgment of Smt. V. K. Tahilramani, J. was earlier in order of time and it was not pointed out to Khanwilkar, J., therefore Judgment in the case of V. K. Jain and others should be followed, which I have been doing in most of the matters, when I am in Division Bench with A. S. Bobde, J.

6. It may be that the petitioner has a good case or strong case in his favour, but this Bench cannot give different orders and is not supposed to give different orders in similar situation and circumstances. Therefore, following the judgment in the case of V. K. Jain and others, both the petitions are disposed of with liberty to the

petitioner to file revision within four weeks from today. Stay to continue till the filing of the revision and continuation of the stay by the Sessions Court. Revision if filed, then delay in filing the Revision stands condoned. Both the petitions are disposed of. Rule discharged in both the petitions.

(D.G. DESHPANDE, J.)